

Decision 02-03-033 March 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 1999. (U 39 M)

Application 97-12-020
(Filed December 12, 1997)

Investigation into the Reasonableness of Expenses Related to the Out-Of-Service Status of Pacific Gas and Electric Company's El Dorado Hydroelectric Project and the Need to Reduce Electric Rates Related To This Non-Functioning Electric Generating Facility.

Investigation 97-11-026
(Filed November 19, 1997)

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Decrease its Rates and Charges for Electric and Gas Service, and Increase Rates and Charges for Pipeline Expansion Service.

Application 94-12-005
(Filed December 9, 1994)

Order Instituting Investigation Into Rates, Charges, and Practices of Pacific Gas and Electric Company.

Investigation 95-02-015
(Filed February 22, 1995)

O P I N I O N

This decision grants The Utility Reform Network (TURN) an award of \$14,258.20 in compensation for contributions to Decision (D.) 01-10-031.

1. Background

In D.01-10-031, the Commission granted rehearing in a number of areas, both for the purpose of taking additional evidence and making necessary modifications to D.00-02-046, the General Rate Case (GRC) decision establishing the authorized base electric and gas revenue requirements for Pacific Gas and Electric Company (PG&E) for the 1999 test year.

TURN filed this request for compensation on December 13, 2001, following issuance of D.01-10-031. No party has opposed TURN's request.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. TURN has complied with the NOI requirements. Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission

may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

TURN's contribution to D.01-10-031 appears throughout the decision. On the threshold question regarding burden and standard of proof, the Commission agreed with TURN that D.00-02-046 identified clear and convincing evidence as the correct standard of proof, but then adopted an incorrect statement of the principle in Conclusion of Law 6, and that this constituted legal error. TURN's application for rehearing sought to have the Commission correct this error, then reconsider its findings and conclusions in light of that correction.

The Commission agreed with TURN that applying the clear and convincing standard would result in reductions to the forecasts adopted in a number of areas. TURN identified forecasts in Electric Distribution, Gas Distribution (Gas Pipeline Replacement Program), Vegetation Management,

Meter Reading, Account Services, and Customer Information Services accounts that all required downward adjustments after application of the clear and convincing standard. The Commission agreed with TURN in every case except for the Gas Pipeline Replacement Program and, as a result, reduced the capital increases approved in D.00-02-046 by \$24.8 million, reduced the expense increases by \$37.3 million, and ordered further rehearing on some portions of PG&E's estimated \$171 million in capital spending for 1998.

In sum, the Commission adopted TURN's recommendations on several major issues. TURN's participation did not duplicate the showings of other parties. We find that TURN has demonstrated that it made a substantial contribution to D.01-10-031.

4. Reasonableness of Requested Compensation

TURN requests compensation for all of the time and expenses reasonably devoted to preparing its application for rehearing, for a total request of \$14,258.20.

For attorney time, TURN seeks a total of \$13,570 for the work of its supervising attorney Robert Finkelstein. This includes 37.75 hours billed at \$280 per hour, 6.75 hours billed at \$320 per hour, and 5.25 hours billed at \$160 per hour. Other costs claimed include photocopying expense of \$672.60, postage costs of \$53.90 and LEXIS service charges of \$55.45, totaling \$781.95.

4.1 Hours Claimed

TURN has presented its attorney's hourly records in an appendix to the requests for compensation. The information reflects the hours devoted to reviewing the underlying decisions, research, and drafting of the pleadings involved with TURN's application for rehearing (37.75 hours in 2000), responding to PG&E's application for rehearing of D.01-10-031 (6.75 hours in

2001), and preparing the request for compensation (5.25 hours). The hours TURN claims are reasonable. As TURN observes, the Commission has granted TURN compensation for all of its claimed costs even in cases where the Commission did not adopt all of TURN's recommendations. D.93-10-074 found that full compensation was justified because TURN allowed the Commission to consider "a broad range of well-developed policy options necessary to make a fully informed decision." For the same reason, we find TURN's request to be a reasonable one in this case.

4.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services."

TURN seeks compensation for Finkelstein at the same rate (\$280 per hour) previously approved by the Commission for work in the year 2000. (*See, e.g.*, D.00-11-002, D.01-11-053.) TURN requests an hourly rate of \$320 for work performed in the year 2001, reflecting an increase of \$40 per hour (14.2%) over the \$280 base rate.

TURN justifies the increased attorney fee rate by citing the most recent *Of Counsel* Annual Survey of the Nation's 700 Largest Law Firms, including rates for major firms in San Francisco. That survey shows that for 2000/2001, the average low-end rate for partners climbed 24% to \$272, while the high-end rate rose 9.5% to \$441, with an average partner rate of \$356, up 15% from the 1999 average. TURN notes that experienced counsel retained by PG&E in its bankruptcy case have rates ranging from \$380 to \$625 per hour, with an average rate of \$469 and a median rate of \$475.

TURN notes that Finkelstein joined the organization in March 1992 and was assigned full responsibility for the organization's work on electric utility issues. He has represented TURN in a number of major regulatory proceedings, including most recently the litigation of PG&E's GRC, both phases of the Post-Transition Ratemaking proceeding, and the pending valuation proceedings for PG&E's and Southern California Edison Company's remaining generation assets, including the hydroelectric valuation proceedings. He recently was made a supervising attorney for TURN and as such is responsible for supervising the work of less experienced attorneys on TURN's staff.

We agree with TURN that Finkelstein may be deemed the equivalent of a mid-range partner in an area law firm, where recent billing rates for such partners ranged from \$272 to \$441 per hour. We will increase Finkelstein's previously authorized hourly rate for 2000 (\$280) to \$310 for work performed in 2001, roughly a 10% increase. Though this increase is slightly less than what TURN requests, it is in line with the higher end of such increases that we have approved (*see* D.01-11-054), and with the economic conditions prevailing in the economy, including the legal sector, for most of 2001. We do not accept the hourly rates charged by PG&E's bankruptcy counsel as setting a "market rate" under Section 1806; TURN has not demonstrated that such counsel are "persons of comparable training and experience who offer similar services" as contemplated by the statute. With the adjustment to Finkelstein's hourly rate for 2001, the amount of compensation awarded TURN is reduced by \$93.75 (*i.e.*, to \$14,258.20) from the amount requested.

4.3 Other Costs

TURN claims \$781.95 for costs relating to photocopying, postage and related administrative activities, a reasonable sum which we adopt here.

5. Award

We award TURN \$14,258.20 for contributions to D.01-10-031. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed this compensation request (February 26, 2002) and continuing until the utility makes full payment of the award.

6. Waiver of Comment Period

This is a compensation matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day review and comment period is being waived.

Findings of Fact

1. TURN timely requests compensation for contributions to D.01-10-031 as set forth herein.
2. TURN requests an hourly rate for its attorney that has already been approved by the Commission for work performed in 2000. That rate should be increased by roughly 10% (from \$280 to \$310 per hour) for work performed in 2001.
3. The miscellaneous costs incurred by TURN in this proceeding are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$14,258.20 for contributions to D.01-10-031 in these proceedings.

3. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$14,258.20 as set forth herein for substantial contributions to Decision 01-10-031.

2. Pacific Gas and Electric Company shall, within 30 days of this order, pay TURN \$14,258.20 plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning February 26, 2002, and continuing until full payment has been made.

This order is effective today.

Dated March 21, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners